

Tamils have a De Jure State

An Interview with Karen Parker

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Karen Parker is a San Francisco-based attorney who specializes in human rights and humanitarian law. She is responsible, in part, for the evolution of international law in such areas as economic sanctions, weaponry, the environment, and the rights of persons with disabilities. She also consults with parties to armed conflicts, other States, and UN officials on the application of armed conflict law. In 1982, she co-founded the Association of Humanitarian Lawyers (originally incorporated as International Disability Law), and has served as its president for over twenty years.

In addition, she is the chief delegate for International Educational Development - Humanitarian Law Project, a nongovernmental organization (NGO) accredited by the United Nations Economic and Social Council (ECOSOC). This year marks her twenty-fifth year representing human rights and humanitarian law concerns at the U.N. Human Rights Forums.

Ms. Parker has facilitated extensive discussions with the Sri Lankan Government and the Liberation Tigers of Tamil Eelam about their obligations under the Geneva Conventions and human rights law, with the goal of bringing the conflict to an equitable resolution.

The Tamil Mirror interviewed Ms. Parker in March 2007.

Tamil Mirror: The Sri Lankan Government is denying food and medicine to the Tamil people in the NorthEast of Sri Lanka to the extent of starving them. Why are the UNHCR and other Human Rights Organizations not raising their voices?

Karen Parker: In my view, the relative quiet of the international community is in part due to very, very strong pressure from the parties that have an interest in the disposition of Tamil Eelam, most notably the US. As you know, UNICEF, an organization that should be especially vocal due to the situation of Tamil children, has traditionally been headed by an American. Given how discussions about various aspects of the crisis have unfolded, I think it's fair to at least raise the possibility of undue pressure from the US government on UNICEF. If so, it would be rather unconscionable in the face of near starvation. UNICEF is certainly on full notice about the crisis.

A second problem is that the Special Representatives for Children and Armed Conflict sent a delegate who focused almost exclusively on the child soldier issue and did not adequately address the other five items under the mandate. At the same time, the Security Council's Working Group on children and armed conflict also, in my view, gave undue attention to child soldiers as the expense of the other five issues* in its recent review of Sri Lanka. [**killing or maiming, abductions, rape or other grave sexual abuse, attacks on schools and hospitals, denial of humanitarian access*]

I never truly have understood, however, why so many other countries would go along with this agenda at the expense of the Tamil people and why the UN forums or personages who finally do speak up, are so vague. There is no question when a statement is made about Darfur: what's at stake, who the perpetrators are, who the victims are.

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TM.: Again, five students in Trincomalee were executed, 18 Aid Workers were killed in Muthur, Tamil Children were bombed in Sencholai and Families were massacred in Mannar. Will the United Nations ever stand up or speak up for the plight of the Tamils?

K.P: I certainly hope that the UN speaks up. Following some of these catastrophes I came to the conclusion that in the overall situation is, in fact, a genocidal attack on the Tamil people. I addressed the High Commissioner and the Secretary General's Special Advisor on the Prevention of Genocide in this light. I raised it that way because to me it should be impossible for the UN to fail to react and I believe I made the case rather well, that it was genocidal.

My first communication was in January, and I haven't received a reply yet from with the High Commissioner or the Special Advisor, although a previous communication from me and one of my colleagues received a reply from the Special Advisor. I submitted a written statement to the UN Human Rights Council informing them that I had sent this letter and giving an abbreviated version of the letter, published as A/HRC/4/NGO/43.

When the situation is at this level of gravity I just cannot fathom the silence and the failure to act. I think there needs to be a real serious questioning by the international community as a whole, and certainly by the Tamil people, in the face of ethnic cleansing, murders left and right, forced eviction, starvation, bombing of children and other civilians, and absolutely racist comments against the Tamil people in the Diaspora, against the Tamils in Sri Lanka and certainly against the LTTE. This is taking place in the context of the stridently anti-Tamil political parties in the south.

It is so unconscionable that I expect to have at least some nudging towards more balanced treatment in the future. I did let the Secretary General's Special Advisor and the High Commissioner know that we were very aware that anytime people express any concern for the Tamils, or concern about acts of the government of Sri Lanka, they will be publicly attacked by the Sri Lankan government. A recent example involves Allan Rock, the former Canadian Minister who was supposed to be investigating six elements* relating to children in armed conflict. Sadly, he only investigated child soldiers, which I consider to be a low priority issue in light of the situation of Tamil children as a whole.

My statements at the UN and elsewhere are also attacked in rather strong and shrill accusations by the government of Sri Lanka. But by accusing the government of this in my statements quiets them down a little bit because they don't want to allow me to win the point. At last year's September/October session, the 2nd session of the new Human Rights Council, I phrased that comment in a way that seems to have forced the Sri Lankan government to tone down their response to me.

Still, the Tamil people in Sri Lanka and in the Tamil Diaspora need some strong support from a strong government. Norway and Iceland try to be balanced in their mediation role but they are two relatively small countries and Norway is a NATO country. The pressure of the European Union countries to put the LTTE on the terrorist list was, I believe, pushed in order to get the other three Nordic countries off the Sri Lanka Monitoring mission. This definitely weakened the possibility for the Tamil civilian population to be properly represented, with only two relatively weak countries involved, rather than the whole Nordic block. I think the Tamils need to understand that targeting may very well have been to weaken the Sri Lanka Monitoring Mission and to keep the sympathy for the Tamil people as pressured as possible.

There is a big Tamil Diaspora that could be putting pressure on other governments that haven't yet proscribed. I'm interested perhaps even in New Zealand joining the fray. I'm working to have Tamil communities in Germany and France, along with non-Tamil friends, pressure those governments to resist the EU banning and to have a more balanced view of the situation.

I frankly think success will be dependant on whether the international community tries to contain the US. Again, in my view, it is the US that is actually behind all this pressure on the UN and other governments to prevent them from taking a fair position. As they become more aware of this, there may be a showdown between the International Community and the US over Sri Lanka.

WM: So, do you think it is because the US is using this pressure that the Sri Lanka is saying that they are fighting terrorism or they have some other motives such as Trincomalee Harbour and other interests in Sri Lanka?

I think the US has a clear interest in Trincomalee Harbour as a potential navy base and I think the US has indicated a clear interest in Palali Airfield. American officials have visited there, I assume to check it out, so to speak.

The US is in a very difficult position in other areas of the world where they had expected to have their normal influences intact, specifically in Latin America. This particular administration and the previous Reagan/Bush administration have had an agenda to monitor and control the international petroleum shipping routes, the production of new fields, etc. The US clearly now seeks rapid military strike capacity against basically any place in the world. Without Sri Lanka providing navy ports and airfields, the US has a severe disadvantage in that part of Asia and the Caucasus.

I think the use of the terrorist card is calculated and intentional. The US knows that it is really an armed conflict, but they use the terrorism card to their advantage.

A situation in which there is armed violence, however, is either an armed conflict or terrorism. It cannot legally be both. The US is using the terrorism label to intimidate other countries, to intimidate non-governmental organizations, humanitarian aid organizations, and to prevent any sympathy for the Tamils to gain a foothold. Imagine telling the American Red Cross that they can't distribute post-Tsunami aid in the Tamil areas, even to those under the Sri Lankan government's control. That is certainly targeting the Tamils in a completely unacceptable way.

TM. Tamils are concerned that many Tamil villages were bombed with multi-barrel Rockets and the International Community was silent. But when there is a bomb blast in Colombo or in Southern Sri Lanka they swiftly condemn the LTTE. Will they ever be impartial?

K.P: What we have is an impasse in Sri Lanka in every area. I have no problem with multi-barrel rocket launchers. It just depends on where they're going. If they are going to military positions then there is no violation. If they're heading to a civilian village then it's a crime against humanity. The International Community responds in a rather lock-step way. If there is an incident against one Sinhala, the headlines, if there is an incident against 1000 Tamils it might get a –mumble/grumble, grudging sentence.

I think the statements made by the US and others after serious war crimes committed by the Sri Lankan government are clearly reluctant mumbles: they do not really express concerns because they never even identify the perpetrator or the victims. The innocent bystander reading such pronouncement could clearly

conclude that the LTTE carried out the operation and that the victims are Sinhala. I think that is purposeful. It has to stop.

TM: The Sri Lankan government de-merged the North and East provinces and collaborates with the Karuna group to try to occupy the Tamil lands in the East controlled by the LTTE. These acts are in clear violation of the Cease Fire Agreement (CFA). Now, the LTTE leader has declared that the "uncompromising stance of Sinhalese Chauvinism has left us with no option but an independent state for the people of Tamil Eelam." Is the Tamil peoples' freedom struggle justified?

KP: Absolutely. Particularly now in the phase of what I consider a genocidal situation that is not receiving the proper attention and condemnation from the International Community. In my opinion, the only sane solution to this problem is succession and severance. The Sinhala clearly cannot live with the Tamils. They insist on taking away their lands, destroying their land, raping their women, starving their children. How can people live under these circumstances?

The Sinhala have had almost 60 years to show the International Community that they can have a multi-ethnic state and all they have shown is that they can have a Sinhala state with an oppressed minority. I think after 60 years, time is up!

In my view, because of the right to self-determination, the Tamil areas belong to the Tamils. It is their land. The civilian government and the military force - the LTTE - have a right de jure (by law) to this State.

Their presence in their own land is not de facto and their government is not a de facto one.

What is the difference between De jure and De facto?

De jure means "by law." Applied to land and States, if the land is legally your land and you are present and govern in your land, you are the de jure State. De facto means "by fact." The Sri Lankan government's occupation of part of the historic Tamil Eelam is de facto. They are there by the clear facts on the ground but they don't have the legal right to it. So, their governance over Tamil land is not de jure.

I know the LTTE has used the terms the other way around when they maintain that they have a de facto State. But I think the Tamils have a de jure State: they have the right to self-determination, the Tamil lands are those lands attached to that right, they are present in their land and they have a Tamil civil administration governing it. This is a de jure State. The Tamil people, of course, also have a de jure right to the Tamil lands under control of the government, but they are not now in control of them.

T.M: But the government can say, just as President Mahinda Rajapaksa said recently, that the government is providing medical facilities, food and education to the Tamils, even in the LTTE-controlled area:

That has nothing to do with whether one has a legal right to the land and a legal right to being a State. In many countries aid goes over borders. If the government of Sri Lanka is going to completely isolate and trap Tamil Eelam they have to provide some sort of humanitarian access. You cannot just encase people alive in that area and have those all die. We see the kind of genocidal policies that are forcing Tamil people away from more and more of their traditional areas. What is officially, legally Tamil Eelam is being wittled away in a de facto way. It is not legal.

If the Tamil people have a right to Tamil Eelam, and I think they do, then they have a right to all of Tamil Eelam and they will always have a right to all of Tamil Eelam. But these little territorial gains that have crippled the ability of the Tamil Eelam de jure state to exist can never ripen into sovereignty for the Sri Lankan government. They're faced with that dilemma, and they do everything to get the conversation onto their own terms. So, they use the trivial excuse that they provide some aid into the Tamil areas as in some ways eliminating the Tamil claim to self-determination. That cannot be. It just is not legally possible.

T.M.: All the Foreign Diplomats in Sri Lanka know about these Human Rights Violations. The President wants a military solution to the Ethnic Problem and yet no ones wants to speak about it?

K.P: It's back to the same problem: the pressure, especially by the UN, on the international community to keep the discussions on terrorism and counter-terrorism rather on the war.

The fact that former government ministers are speaking out is similar to during the dirty war in Argentina. Nobody could budge the generals, they had strong international support from the US and others who helped put them in power.

But there was kind of the court of shame. There comes a point, if people have any humanity left, they are no longer willing to participate in a genocidal plan and they will step out.

I think the fact that former ministers in Sri Lanka have said anything, even in a guarded way, is an indication that the court of public shame has had an effect.

It is very difficult, especially for the former foreign minister who played such a role in going around the world trying to convince everybody to put the LTTE on the world terrorist list, of course at the request and pressure from the US government newly inspired by the Rajapakse administration as a whole, but there comes a point where the cost in lives is just too much and the will of participants to go along with it weakens.

This happened in the Vietnam War when the US forces higher and higher up in the military and in the government could no longer stomach first of all, the day-to-day lies and second of all, the atrocities being committed by US forces in Vietnam and that they had intervened. The burden became too great.

We hope the burden becomes too great for these forces in relationship to the Tamil people before the Tamil people are annihilated. Unfortunately, we are down to kind of an end game in that scenario: I would want to be optimistic but this is a situation where there are just too many "ifs." However, having this court of shame ostracizing the Sri Lankan government because of their atrocities can happen. In earlier times, it got to the point in the United Nations where the Argentinean and Chilean representatives had to walk along the wall so they would not be confronted. I think we need a lot more strength in the court of public shame against the government of Sri Lanka.

Unfortunately, the government of Sri Lanka has been given enormous latitude that neither the government of Chile or Argentina, for example, enjoyed. As I said in statements to the High Commissioner and at the Human Rights Council, this is unprecedented: there is no other State that has perpetrated such a genocidal, abusive war crimes against another people that has been allowed to walk right down the middle of the corridor.

T.M: If India wanted to solve this problem it could have been done long time ago. What do you think is holding them back, apart from the Rajiv Gandhi killing? This is a Humanitarian issue?

K.P: Well, India is playing a very "wily customer" game and clearly has geopolitical interests in the disposition of Sri Lanka as a whole and in certain of the Tamil areas. Rajiv Gandhi got tricked in Sri Lanka. The intentions originally were in India's best interest, but this was sabotaged. I was pretty certain I knew how the sabotage came down and I think in the long run Rajiv Gandhi came to accept my position on the sabotage and whose interest played into the catastrophe for India.

In fact, I remember when the assassination first occurred most of the Indian human rights people and Indian groups assumed that it was a CIA job and it very well may have been, I do not think we will ever know. I don't care who is admitting what, the fact that a Tamil was used perhaps is no indication that the Tamils as a whole had anything to do with it. There are Tamil quislings. There are Tamils who will do that so that their families will get huge sums of money from other sources. Families make sacrifices for other family members. There are all kinds of possibilities in this situation, but I do remember from the very beginning particularly the Mumbai media and others (I think also *The Statesman*?) also came out very strongly with concern that it was CIA-motivated: one of these "targeted events" that has occurred in so many places around the world involving potential political opponents of, especially, the US.

From my perspective at the time too, Rajiv Gandhi was the least likely person to be targeted by the LTTE because he had already flopped in Sri Lanka: there was absolutely no way that Rajiv Gandhi would be tricked again in Sri Lanka. So, politically it made no sense for the LTTE to make that target. There are many uninvestigated similarities in the world that we will probably never know, but I have grave suspicions on this particular one.

Subsequently, the pressures from other parties on India to proscribe the LTTE was very strong. President Bush sojourned through India. He has not visited many counties, but he did visit there and I think there must have been motivation for some kind of deals in that regard. I don't know what these deals were, but I am quite sure there was discussion of the Tamil situation.

The US, as we all know, wants those bases and I am sure needed to reassure India about them. The only other potential place for what the US might have in mind for the region would be Pakistan and I am sure the government of India would not want to have major US bases in Pakistan. Having US bases in Sri Lanka would be more acceptable.

Again, I don't know what occurred. It will be a while before insiders become so upset that they will begin to talk. How this unfolds I am not exactly sure. There is pressure in India, but the pressure in India right now is not useful to the Tamil cause even with the change of government in Tamil Nadu. The politicians in the area who should be much stronger are relatively weak in that there is no pressure in India to take the terrorist label off the LTTE.

The label is obviously politically done. Why aren't the politicians saying "We don't like that, we resist that.?" In the situation of the Iranian opposition, there was proscription both in the US and, with US pressure, in the EU. But within both of those bodies there is great pressure to undo the proscription. For example, in the US more than half the Members of Congress are urging that the Iranian opposition be taken off the list. Because of that the US government is having a difficult time.

There is no such thing happening in India and there should be. The politicians should band together and say that it was a mistake to put the LTTE on the terrorist list and they should take it away.